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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,759	06/25/2003	Michael Rosenbauer	2000P13035WOUS	2143
46726	7590	03/21/2006	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			TRAN, HANH VAN	
		ART UNIT		PAPER NUMBER
				3637
DATE MAILED: 03/21/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/603,759	ROSENBAUER ET AL.	
	Examiner	Art Unit	
	Hanh V. Tran	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 21 February 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 10-14 and 16-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 10-14 and 16-25 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 21 February 2006 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/21/2006 has been entered.

Drawings

2. The drawings were received on 2/21/2006. These drawings are acceptable.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10-13, 18, 20-21, 23, and 25 stand rejected under 35 U.S.C. 102(b) as being anticipated by Europe 556,787 to Premoli et al.

Premoli et al discloses a washing container for a dishwashing machine comprising all the elements recited in the above listed claims including, such as shown in Figs 7-9, a container body having a plurality of assembled parts, a base frame 1', at least one cover part 22' attached to the base frame part 1', said cover part including a plurality of side parts 23', 44, said side parts connected to one another at an angle to form a substantially U-shaped cover part 22' having an open end, the base frame part

having a floor part, an upstanding side part 28, corner stays 2a-b, said upstanding side part located in said U-shaped cover part open end completing said cover part, said base frame part 1' and said upstanding side part 28 formed as a unitary assembly, said cover part formed from a corrosion-resistant material, said base frame part including a filter floor part 4(col. 3, lines 53-58); wherein the cover part is attached externally to said at least two upstanding corner stays of the base frame.

5. Claims 10-11, 18, 20, and 22 stand rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,368,379 to Wrangberth.

Wrangberth discloses a washing container for a dishwashing machine comprising all the elements recited in the above listed claims including, such as shown in Figs 1-2, a container body including a plurality of assembled parts; a base frame part 10, said base frame part having a floor part 19 and at least two upstanding corner stays 26; and at least one cover part 11 attached to said base frame part, said cover part 11 including a plurality of side parts, said side parts connected to one another at an angle to form a substantially U-shaped periphery of said cover part, said substantially U-shaped periphery of said cover part having an open end and a closed end opposite said open end, and said cover part being attached to said base frame part with its U-shaped periphery mounted on said floor part 19 of said base frame part, such as shown in Fig 2, and said cover part 11 being attached at a respective one of its open end and its closed end to said at least two upstanding corner stays; wherein said cover part 11 is attached internally, Fig 2, to said at least two upstanding corner stays of said base frame part.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 14, 16, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Premoli et al.

Premoli et al discloses all the elements as discussed above except for (1) claim 14, said base frame part and said upstanding side part unitary assembly formed from a molded plastic material, (2) claim 16, the "peripherally closed rectangle cover part is formed from two substantially L-shaped side parts", (3) claims 17 and 24, the upstanding side part including "additional retention functional elements, including at least one receptacle retention element.

In regard to claim 14 of the base frame part and the upstanding side part formed from a molded plastic material, since molded plastic material is a well known and commercially available product, and it is well known in the art to make parts of a dish-

washing machine out of various materials including molded plastic. Therefore, it would have been obvious and well within the level of one skill in the art to modify the base frame part and the upstanding side part of Premoli et al by making them out of an alternate material, i.e., molded plastic material, depending on the desired need of the person constructing the parts, such as economic considerations, personal references, material readily available, etc.

In regard to the limitation in claim 16, Premoli et al discloses the claimed invention except for the cover part being formed from two substantially L-shaped side parts, instead of one U-shaped side part. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cover part being formed from two substantially L-shaped side parts, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

In regard to the limitation in claim 17, although Premoli et al does not clearly teach the limitation recited therein of the upstanding side part 28 having at least one receptacle retention element, it would have been obvious and well known in the art to provide the upstanding side part 28 of Premoli et al with at least one receptacle retention element for holding cleaning agent.

9. Claim 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Premoli et al in view of USP 3,658,075 to Jacobs.

Premoli et al discloses all the elements as discussed above except for at least one of said side parts having a heat exchanger integrated therein.

Jacobs teaches the idea of providing a heat exchanger 60 integrated within a dishwashing machine container for the purpose of improving condensation means. Therefore, it would have been obvious to modify the structure of Premoli et al by providing at least one of said side parts with a heat exchanger integrated therein for the purpose of improving condensation means, as taught by Jacobs, since both teach alternate conventional dishwasher structure, used for the same intended purpose, thereby providing structure as claimed.

Response to Arguments

10. Applicant's arguments filed 2/21/2006 have been fully considered but they are not persuasive. In response to applicant's argument on page 11 that the cover part of Premoli is a "unitary monopiece", while the cover part of the invention of the instant application includes "a plurality of side parts connected to one another", the examiner takes the position that (1) the pending claims fail to provide adequate structural limitations in order to distinguish from Premoli; since the pending claims are apparatus claims, and it is well known that a claim drawn to an apparatus must distinguish in terms of structure, (2) even if the cover part of Premoli is a "unitary monopiece", the side parts 23,44 of the cover part must still "connected" to each other to form a "unitary monopiece".

11. In response to applicant's argument on page 11 that the cover part of Wrangberth does not have a U-shaped periphery, the examiner takes the position that the claims fail to provide adequate structural limitations in order to distinguish from

Wrangberth, and the cover part of Wrangberth, as stated in the above art rejection, does provide a "U-shaped periphery".

12. In response to applicant's argument on page 11 regarding Jackson fails to teach a cover part having a plurality of side parts and attached to the base frame part, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Jackson is used for the teaching of providing a dish-washing machine with a heat exchanger integrated within the dish-washing container for the purpose of improving condensation means.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT
March 17, 2006



Hanh V. Tran
Art Unit 3637